

The Lord Ordinary "sustained the objection, and remitted to the clerk to rectify the locality accordingly."

No. 39.

But on advising a reclaiming petition for the Earl of Hopetoun, with answers, the Lords considering the point to be settled by the case of Fotheringham, "altered the Lord Ordinary's interlocutor, and found that the parishes of Kirkpatrick-Fleming and Kirkconnel, being under different titularities, the modified stipend must be divided betwixt the two parishes proportionally, effeiring to their respective rentals, and that each titular has only right to allocate the proportion thereof within his own titularity."

Lord Ordinary, *Ankerville*.
Alt. *D. Williamson*.

For Sir William Maxwell, *H. Erskine*.

R. D.

*Fac. Coll. No. 95. p. 225.*1799. *January 23.*

The DUKE of HAMILTON, and Others, *against* LORD DUNDAS, JOSEPH WILLIAMSON, and Others.

In 1708, James, Earl of Linlithgow, who was titular of the whole parish of Falkirk, sold the teinds of the barony of Polmont, part of the parish, to the Duke of Hamilton.

This barony, and other lands in the parish of Falkirk, the teinds of which were held by those in right of the family of Linlithgow, were afterwards erected into the parish of Polmont.

In a locality of this last mentioned parish, it was considered by the Court, on advising memorials, as a point completely settled, that, as there were two titularities here, the augmentation must be divided between them according to their proven rentals, and separate schemes of locality given in, subdividing the burden among the heritors in each, according to the ordinary rules, i. e. exhausting the free teinds before those heritably disposed; 13th July, 1774, Fotheringham against Bower, and others, No. 27. p. 14815; 5th December, 1798, Sir William Maxwell, No. 39. p. 14832.

Judgment was given accordingly.

Lord Ordinary *Ankerville*.
Alt. *Wm. Robertson*.

For the Duke of Hamilton, &c. *Ed. M'Cormick*.

D. D.

*Fac. Coll. No. 106. p. 244.*1801. *December 8.*WRIGHT *against* BINNING.

The Reverend James Wright, Minister of Maybole, obtained (23d November, 1796,) an augmentation of stipend in the teind-court. The process of locality was

No. 40.

When there are two titularities in a parish, the burden of augmentations of stipend is borne by them according to the proven rental of the lands in each, and separate schemes of locality are made up, subdividing the burden among the heritors in each, according to the ordinary rules.

No. 41.

A Minister is entitled to

No. 41.
the selling
prices of the
victual due as
bygone sti-
pend.

not yet (1801) settled; and at last he extracted the decree of modification, and charged for the bygone augmented stipend, commencing with the half of crop and year 1795. The heritors proposed paying the victual according to the fiars of the respective years for which it was due; but Wright claimed the selling prices at Candlemas, because, in the county of Ayr, the fiars do not ascertain the price of the best and the price of the worst bear; nor do they ascertain the price at Candlemas, when victual stipend is payable; but they fix an average of the prices of best and worst from November to March. During some of the years in question, the market price in the parish of Maybole was double of the fiars of the county. In support of this claim, were quoted Barclay against Simpson, No. 1. p. 4413. *voce* FIARS OF THE YEAR; Henderson against Henderson, No. 4. p. 4415. *IBID-EM*; Mitchell against Reid, 10th July, 1800, (not reported; see APPENDIX.) The Minister is entitled to the *ipsa corpora*; and if these are not demanded, the heritors must pay the selling market-price; the price they have themselves actually obtained for the victual.

The Lord Ordinary, (11th July, 1801,) rejected this claim, and found him entitled only to the fiar prices of the bygone victual-stipend; but on advising a petition and answers,

The Court, (8th December) altered this interlocutor,

Although the heritor pleaded, That he could not be obliged to keep the grain itself from the market for a course of years, nor could the Minister be obliged to accept of the market price, if it happened to be lower than the fiar price. While this last is the fixed rule by the provision of the law, as the act of sederunt, 21st December, 1723, expresses it, "to liquidate the price of the victual in divers processes that come before the Court of Session and the subordinate judicatories," it would be difficult to ascertain the real price from the fact, amid the fluctuations of the market, and depending upon the varying skill and speculations of buyer and seller. In so much is this held to be the rule, that objections to the accuracy of the fiars are never listened to; Treasurer of Aberdeen against Feuers of Elsieck, No. 5. p. 4415. *voce* FIARS OF THE YEAR, as it would produce great uncertainty, and much delay and expense in the administration of justice.

Lord Ordinary, *Meadowbank.*

Act. *A. Campbell, junior.*

Agent, *P. Robertson.*

Alt. *Fergusson.*

Agent, *A. Blane, W. S.*

Clerk, *Home.*

F.

Fac. Coll. No. 10. p. 21.

1802. *March 3.*

JOHNSTON *against* The HERITORS of ST. CUTHBERT'S.

No. 42.
The Minis-
ter's right to
a suitable sti-
pend, is pa-
ramount to

About the beginning of the seventeenth century, the parish of North Leith was disjoined by act of Parliament from the parish of Holyroodhouse, and a church was erected for the accommodation of the parishioners. The inhabitants of Newhaven finding this more convenient than their parish-church of St. Cuthbert's, were ac-